

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00275-16
45-003-14-1-5-01201-16
45-003-16-1-5-00517-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-304-019.000-003
Assessment Years: 2013, 2014 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 12, 2016. On May 27, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 23, 2017. On May 8, 2017, Petitioner filed a Form 131 petition with the Board.
4. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
5. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on April 9, 2018. Neither the ALJ nor the Board inspected the property.
6. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Terrance Dourousseau, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

Facts

7. The subject property is a vacant residential lot located at 4313 W. 26th Place approx. in Gary.
8. For 2013 and 2014, the assessed value was \$3,200. For 2016, the assessed value was \$3,000.
9. Petitioner requested an assessed value of \$1,700 for all years at issue.

Record

10. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”) for the subject property,
Respondent Exhibit 1:	PRC for the subject property,
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

13. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. The burden for 2014 depends on the outcome for 2013. Petitioner did not appeal the 2015 assessed value and the assessed value decreased from 2015 to 2016. Petitioner, therefore, also has the burden of proof for 2016.

Summary of Parties’ Contentions

16. Petitioner’s case:
 - a. Petitioner acquired the property for \$90 at auction. He contends this indicates a fair market value for the property because the auction was attended by hundreds of bidders willing and able to buy it. Of all the people in attendance, no one bid higher than \$90. *Nowacki testimony; Pet’r Ex. 2.*
 - b. Petitioner agrees that the address on the PRC, 4313 W. 26th Avenue, is approximate, he does not necessarily agree that is correct. Although he does not necessarily agree with the size on the GIS map because he has not surveyed the lot, he accepts it. *Nowacki testimony; Pet’r Exs. 1 and 2.*
 - c. Petitioner contends this property is in an area being targeted for some sort of landfill. There are some paved streets but there is no recent activity. It’s a declining area and that is reflected by the decreasing assessed values. However, on the PRC, the neighborhood is described as “other.” *Nowacki testimony; Pet’r Ex. 2.*
 - d. Petitioner is willing to split the difference between what he paid for the property and the assessed value, recognizing that he got a good deal on the property. As a result, Petitioner requests a value of \$1,700. *Nowacki testimony.*

17. Respondent's case:
- a. Respondent contends Petitioner failed to present any probative evidence to support his requested values. Consequently, Respondent requests no change in the assessments. *Durousseau testimony*.

ANALYSIS

18. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 and 2014 assessments at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner contends the property should be assessed at \$1,700 for each year at issue. However, Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner contends the subject PRCs are inaccurate. However, Petitioner presented no evidence to support that contention. Simply contesting the methodology is insufficient to make a prima facie of an error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674,677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject

property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead determining what the correct value actually is.)

- e. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- f. Petitioner failed to make a prima facie case for 2013. Because the 2014 value did not increase, he had the burden for that year as well and similarly failed to meet it. He also had the burden of proof for 2016 and once again failed to meet it.

CONCLUSION

- 19. Petitioner failed to establish a prima facie case for any of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013, 2014 and 2016 values should not be changed.

ISSUED: June 20, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.